

12999.5., continued

(c) Before a civil penalty is levied, the person charged with the violation shall be given a written notice of the proposed action including the nature of the violation and the amount of the proposed penalty, and shall have the right to request a hearing within 20 days after receiving notice of the proposed action. A notice of the proposed action that is sent by certified mail to the last known address of the person charged shall be considered received even if delivery is refused or the notice is not accepted at that address. If a hearing is requested, notice of the time and place of the hearing shall be given at least 10 days before the date set for the hearing. At the hearing, the person shall be given an opportunity to review the commissioner's evidence and to present evidence on his or her own behalf. If a hearing is not timely requested, the commissioner may take the action proposed without a hearing.

(d) If the person upon whom the commissioner levied a civil penalty requested and appeared at a hearing, the person may appeal the commissioner's decision to the director within 30 days of the date of receiving a copy of the commissioner's decision. The following procedures apply to the appeal:

(1) The appeal shall be in writing and signed by the appellant or his or her authorized agent, state the grounds for the appeal, and include a copy of the commissioner's decision. The appellant shall file a copy of the appeal with the commissioner at the same time it is filed with the director.

(2) The appellant and the commissioner may, at the time of filing the appeal or within 10 days thereafter or at a later time prescribed by the director, present the record of the hearing including written evidence that was submitted at the hearing and a written argument to the director stating grounds for affirming, modifying, or reversing the commissioner's decision.

(3) The director may grant oral arguments upon application made at the time written arguments are filed.

(4) If an application to present an oral argument is granted, written notice of the time and place for the oral argument shall be given at least 10 days before the date set therefore. The times may be altered by mutual agreement of the appellant, the commissioner, and the director.

(5) The director shall decide the appeal on the record of the hearing, including the written evidence and the written argument described in paragraph (2), that he or she has received. If the director finds substantial evidence in the record to support the commissioner's decision, the director shall affirm the decision.

(6) The director shall render a written decision within 45 days of the date of appeal or within 15 days of the date of oral arguments or as soon thereafter as practical.

(7) On an appeal pursuant to this section, the director may affirm the commissioner's decision, modify the commissioner's decision by reducing or increasing the amount of the penalty levied so that it is within the director's guidelines for imposing civil penalties, or reverse the commissioner's decision. Any civil penalty increased by the director shall not be higher than that proposed in the commissioner's notice of proposed action given pursuant to subdivision (c). A copy of the director's decision shall be delivered or mailed to the appellant and the commissioner.

(8) Any person who does not request a hearing pursuant to subdivision (c) may not file an appeal pursuant to this subdivision.

(9) Review of a decision of the director may be sought by the appellant within 30 days of the date of the decision pursuant to Section 1094.5 of the Code of Civil Procedure.

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(e) The commissioner may levy a civil penalty pursuant to subdivisions (a), (c), and (d) against a person violating paragraph (1), (2), or (8) of subdivision (a) of Section 1695 of the Labor Code, which pertains to registration with the commissioner, carrying proof of that registration, and filing changes of address with the commissioner.

(f) After the exhaustion of the appeal and review procedures provided in this section, the commissioner or his or her representative, may file a certified copy of a final decision of the commissioner that directs the payment of a civil penalty and, if applicable, a copy of any decision of the director or his or her authorized representative rendered on an appeal from the commissioner's decision and a copy of any order that denies a petition for a writ of administrative mandamus, with the clerk of the superior court of any county. Judgment shall be entered immediately by the clerk in conformity with the decision or order. No fees shall be charged by the clerk of the superior court for the performance of any official service required in connection with the entry of judgment pursuant to this section.

12999.6. Sunset on 1/2/2006

13000. (a) Except as provided in subdivisions (b) and (c), an action brought pursuant to this article shall be commenced by the director, the commissioner, the Attorney General, the district attorney, the city prosecutor, or the city attorney, as the case may be, within two years of the occurrence of the violation.

(b) When a commissioner submits a completed investigation to the director for action by the director or the Attorney General, the action shall be commenced within one year of that submission. However, nothing in this subdivision precludes the director from returning the investigation to the commissioner for action to be commenced by the commissioner, the district attorney, the city prosecutor, or the city attorney, as provided in subdivision (a).

(c) An action brought by the director to collect unpaid mill assessments and delinquent fees required by Article 4.5 (commencing with Section 12841) or an action brought by the director to collect civil penalties pursuant to Section 12999.4 for violations of Article 4.5 (commencing with Section 12841) or Section 12993 or Section 112995 shall be commenced within four years of the occurrence of the violation.

13000.1. The commissioner or director may bring an action to enjoin the violation or the threatened violation of any order made pursuant to this division in the superior court in the county in which the order is issued or the violation occurs or is threatened, and the court may enjoin the violation or threatened violation upon that showing and without further evidence of irreparable injury. The court may compel specific performance of any acts or course of conduct necessary to protect persons, animals, crops, or property.

Article 13. Cease and Desist
Sections 13101-13102

13101. The director, upon a finding that the use, handling, delivery, or sale of a pesticide in violation of any provision of this division, or any regulation issued pursuant to it, is taking place, or appears imminent, and that activity, if allowed to proceed, will present an immediate hazard or cause irreparable damage, may issue an order to the persons responsible for that activity to cease and desist from further commission of the violation.

13102. The agricultural commissioner, upon a finding that the use, handling, delivery, or sale of a pesticide in violation of any provision of this division, or any regulation issued pursuant to it, is taking place, or appears imminent, and that activity, if allowed to proceed, will present an immediate hazard or cause irreparable damage, may issue an order to the persons responsible for that activity to cease and desist from further commission of the violation.

Any person aggrieved by a cease and desist order issued by an agricultural commissioner may appeal the order to the director, who shall affirm, modify, or rescind the order. The order of the agricultural commissioner shall remain in force during the appeal to the director, and until the director's decision has been rendered.

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